
COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPREME JUDICIAL COURT
SJC-12475

COMMONWEALTH OF MASSACHUSETTS,
Appellee

v.

ADRIAN LOYA,
Appellant

On Appeal From a Conviction in
Barnstable Superior Court 1572CR00095

**BRIEF OF
APPELLANT ADRIAN LOYA**

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STATEMENT OF ISSUES

1. Should a new trial be granted, where the jury verdict slip should have asked whether the Commonwealth has proven the defendant's guilt and sanity beyond a reasonable doubt, which require "Yes" or "No" answers, instead of asking the jury to categorize the defendant as being "guilty," "not guilty, lack of criminal responsibility," or "not guilty"?
2. Should a new trial be granted, where the jury should have considered whether the defendant is "guilty, but not criminally responsible," rather than "not guilty, lack of criminal responsibility"?
3. Should the defendant be granted a new trial, pursuant to G.L. c. 279 § 33E?

STATEMENT OF CASE

On July 1, 2015, a Barnstable County grand jury indicted Mr. Loya as follows:

1. Murder. G.L. c. 265 § 1
2. Armed Assault to Murder. G.L. c. 265 § 18(b)
3. Armed Assault to Murder. G.L. c. 265 § 18(b)
4. Armed Assault to Murder. G.L. c. 265 § 18(b)
5. ABDW, Serious Bodily Inj. G.L. c. 265 § 15A(c) (i)
6. ABDW, Serious Bodily Inj. G.L. c. 265 § 15A(c) (i)
7. ABDW, Serious Bodily Inj. G.L. c. 265 § 15A(c) (i)
8. Home Invasion. G.L. c. 265 § 18C

9. Home Invasion. G.L. c. 265 § 18C
10. Armed Assault in Dwelling. G.L. c. 265 § 18A
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15. Armed Kidnapping w/ Serious BI. G.L. c. 265 § 26
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17. Unarmed Burglary and Assault. G.L. c. 266 § 14
18. Burning Motor Vehicle. G.L. c. 266 § 5
19. Poss. Hoax Incendiary Device G.L. c. 266 § 102(b)
20. Assault & Battery Police Off. G.L. c. 265 § 13D
21. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
22. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
23. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
24. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
25. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
26. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
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28. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
29. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
30. Poss. Large Capacity Feed. Dev. G.L. c. 269 § 10
See A-3, 14, 31-60 (Barnstable Superior Court docket
no. 1572CR00095).¹

A jury trial was held from August 28, 2017 to
September 12, 2017 (Nickerson, J., presiding). A-13.
Mr. Loya was found not guilty on count 3. 11/806; A-
24. He was found guilty on all remaining counts.

¹ References to the Appendix are A-page. Two DVDs
were played at trial. 4/33; 5/10. Transcripts of those
DVD were marked "E" and "F" for Identification. 4/32.
Those transcripts are contained in the Appendix
starting at pages 61 and 138, respectively. This
brief refers to those transcripts by the transcript
page number, rather than their appendix page number.

The Impounded Appendix consists of four criminal
responsibility reports.

References to the Addendum are Add-page.
References to the trial transcripts are volume-page
number.

3/805-811; A-24-26. On the Murder indictment, he was found guilty on theories of Deliberate Premeditation and Extreme Atrocity or Cruelty. 11/805.

On November 12, 2018, Mr. Loya was committed to state prison as follows (unless a House of Correction commitment is indicated):

1. Life without parole
 2. 18 to 20 years, concurrent w/count 1
 4. 18 to 20 years, concurrent w/count 1
 5. 14.5 to 15 years, concurrent w/count 1
 6. 14.5 to 15 years, consecutive to count 1
 7. 14.5 to 16 years, consecutive to count 6
 8. Life, concurrent w/count 1
 9. Life, concurrent w/count 1
 10. Life, concurrent w/count 1
 11. Life, concurrent w/count 1
 12. 5 years, consecutive to count 1
 13. 5 years, consecutive to count 9
 14. 5 years, consecutive to count 4
 15. Life, concurrent w/count 1
 16. Life, concurrent w/count 1
 17. Life, concurrent w/count 1
 18. 2.5 to 3 years, concurrent w/count 1
 19. 4.5 to 5 years, concurrent w/count 1
 20. 2.5 years in the HOC, concurrent w/count 1
 21. 9 to 10 years, concurrent w/count 1
 22. 9 to 10 years, concurrent w/count 1
 23. 9 to 10 years, concurrent w/count 1
 24. 9 to 10 years, concurrent w/count 1
 25. 9 to 10 years, concurrent w/count 1
 26. 9 to 10 years, concurrent w/count 1
 27. 9 to 10 years, concurrent w/count 1
 28. 9 to 10 years, concurrent w/count 1
 29. 9 to 10 years, concurrent w/count 1
 30. 9-10 years, concurrent w/count 1
- 11/834-840; A-26-28.

A notice of appeal was timely filed on September 15, 2017. A-28, 214.

On November 17, 2017, Loya was re-sentenced on counts 8 through 17 as follows:

8. Life, not less than 25 yrs, concurrent w/count 1
 9. Life, not less than 25 yrs, concurrent w/count 1
 10. Life, not less than 25 yrs, concurrent w/count 1
 11. Life, not less than 25 yrs, concurrent w/count 1
 12. 5 yrs to 5 yrs and a day, consecutive to count 1
 13. 5 yrs to 5 yrs and a day, consecutive to count 9
 14. 5 yrs to 5 yrs and a day, consecutive to count 4
 15. 25-30 years, concurrent w/count 1
 16. 25-30 years, concurrent w/count 1
 17. Life, not less than 25 yrs, concurrent w/count 1
- A-28-29.

STATEMENT OF THE FACTS

Summary

Mr. Loya broke into the home of his former co-worker at 2:00 a.m. Once inside, he shot and killed her. He also shot and seriously wounded her spouse. Exiting the house, he shot and seriously wounded a police officer. He then surrendered at the scene.

The defense at trial was criminal responsibility. Four mental health professionals testified.

Detailed Facts

Defendant's background

Mr. Loya grew up in El Paso, Texas. E/4. He was 6'3" in high school. 7/304. His classmates ridiculed him, calling him "lurch" and "mute." 7/212. His one best friend in high school was Jacob Heller. 5/44-47, 65-66. They were in the same Spanish class

and on the swimming team. 5/45, 47. They would play video games and watch Sci-Fi movies together. 5/45-47. They were solitary, nerdy, and geeky. 5/69-70. They had no interests outside of swimming and gaming. 5/70.

Loya was not close to his family. 5/62, 74, 78-79; E/58. When Loya's father wanted to know what was going on in Loya's life, he would call Heller for an update. 5/74,77. Loya has one brother and one sister. E/59. He does not speak with them. E/59.

Loya had a Golden Retriever. 7/336. He was very, very close to the dog. 5/80,95. It was his companion from high school until he died in 2013. Id. Loya is self-described as having no friends. E/60-61.

After graduating from high school, Loya attended community college for a year. E/4. Heller went off to college in Washington D.C. 5/49, 71.

Loya joined the Coast Guard around 2004-2005. E/4; 5/72. He was stationed in Virginia. 5/60, 73. Heller stayed with Loya in Virginia for a few weeks after he [Heller] graduated from college. 5/73. During that time, they caught up with each other. 5/73-74. Heller described Loya as being a loner the entire time he knew him. 5/74.

Coast Guard station Kodiak, Alaska

In September 2011, Loya was transferred to Kodiak, Alaska. E/19-20,52. Kodiak is a small island. 6/111. He could not take his dog with him, so he left the dog with his father in Texas. 5/80,94.

On moving to Kodiak, Loya met fellow Coast Guardsman Lisa (Berlango) Trubnikova. E/18-19, 52; 6/107. Lisa was assigned to Kodiak about the same time. 6/107. Their two-year assignments ran until the summer of 2013. 6/121-122; E/54.

In December 2011, Lisa married Anna Trubnikova.² 6/107,125. Anna was also in the Coast Guard. 6/107-108. She joined Lisa in Kodiak in January 2012. 6/107-108, 125. They lived off base, about ten minutes away from Loya. 6/108, 111.

Defendant's relationship with the Trubnikovas

Lisa worked with Loya at Kodiak in the Information Technology group. 6/108. Loya held senior rank to Lisa. E/45.

Anna worked in another department. 6/108. She would see Loya at Guard morale events. 6/111. She initially met Loya at an IT social gathering at a

² Hereinafter defendant refers to the Trubnikovas by their first names.

local bar. 6/108. Lisa described Loya as being a "typical IT guy." 6/129. On the other hand she did not consider him to be shy. 6/128. He was awkward, but not socially awkward. 6/128. He was on the volleyball team. 6/128. According to Anna, Loya would often ask them to watch Star Wars together. 6/111. It was his favorite movie. 6/112. He felt they needed to be exposed to it. Id.

One time Loya hosted a gaming night for the Trubnikovas and another couple. 6/113. On that occasion, Loya was more accommodating to Lisa than to Anna and the other couple. 6/114. He offered Lisa a Rock Star energy drink, but he did not do the same for the others. 6/115.

While in Kodiak, Loya and Heller videogamed or Skyped every few months. 5/49, 52. Lisa became the focus of their conversations. 5/57. Loya never mentioned anyone else. 5/82. Eventually he no longer talked about gaming; just about Lisa. 5/84. As a result, Heller thought Loya was fixated on her. 5/84. He recommended that Loya seek mental health assistance. 5/83.

On September 9, 2012, Lisa called Loya. E/19,44, 51. Anna was away on a training mission for three

weeks. E/19; 6/129-130. Lisa invited him to "hang out" with her. E/19. This was the first time she had done this. E/19. When Loya arrived, Lisa was inebriated. E/19. They drank and watched television. 5/90.

Then Lisa made an advance on Loya. 5/90. Lisa touched her crotch. E/19. She tried to kiss Loya. E/19. Loya refused. E/19. When Lisa went to the bathroom, Loya decided to leave. E/20. However, he heard a thump in the bathroom. E/20. Thinking Lisa had passed out, he went to check on her. E/20. Lisa did not respond initially. E/20. Then she threw open the bathroom door and said she was okay. E/20.

Loya told Lisa he was leaving. E/20. She said "No," and then pulled him to her bed. E/20. She told Loya not to tell Anna. E/20. He froze. E/20,44. Lisa placed him on her bed, telling him to sleep with her. E/20. He said no. E/20. He got up to leave but she yelled at him to come back to the bedroom. E/20. At some point she gave up and passed out. E/20.

According to Loya, since that evening there were several incidents where Lisa would yell at him because he had not accepted her advance. E/20. She also made additional overtures to him. Id.

Loya felt that this "really screwed [him] up in a weird way." E/20. He felt traumatized. E/5. He believed this was a sexual assault and that he was a sexual assault victim. E/5. More particularly, he felt that he had been raped. E/26,52. He described it as a "rape of the mind from a sexual attack." E/26.

Over the course of the next two years, he had four emotional breakdowns. E/50. He had suicidal thoughts and panic attacks. 7/347. He had trouble sleeping. 7/341. He started taking so much Benedryl for his insomnia that he became "addicted." Id. When he was able to sleep, he had nightmares. 7/347.

In February 2013, Loya wrote a 22-page letter to Lisa, telling her how he felt. E/45; 7/259. Lisa got angry. E/45-46. This caused him to believe she was going to make things up and lie about what had happened. E/45. So he went to the Coast Guard Investigation Service (CGIS), to get his story "on record." E/45-46. He liked Lisa, but not in a romantic way. E/47. He wanted to get over what had happened and return to the way things had been. E/47,52.

Loya was questioned for the CGIS investigation. E/50. He had one of his breakdowns during the interrogation. E/50. He saw a therapist in Kodiak at

the recommendation of the CGIS investigators. E/50-51.
In May 2013 he saw a psychiatrist in Kodiak. E/61.

Loya told Heller about the incident with Lisa.
5/58. He felt that his career with the Coast Guard
was in jeopardy. 5/58.

Alaska posting concludes

Loya's and Anna's postings to Kodiak concluded in
June 2013. 5/94; 7/258; E/54-55. Loya was transferred
to Chesapeake, Virginia. E/21. Before leaving, he was
ordered not to contact Lisa and Anna again. 6/122.

Loya drove from Alaska to Virginia for his new
posting. 6/53. Along the way, he stopped and hired a
prostitute. 6/53. He explained that he did not care
for sex because he never had any personal
relationships with anyone. 6/53. However, he wanted to
know if he could still perform after what Lisa had
done to him. 6/53.

Continuing his journey, he stopped at his
father's house in Texas to retrieve his dog. 5/80;
6/53. But he discovered the dog maltreated and near
death. 5/80-81; 6/53-54. He had his dog euthanatized.
5/80. As a result of this, his already strained
relationship with his father worsened. 5/80-81. In

addition, the death of his dog made him hate Lisa even more. 6/53-54.

When Loya arrived at the Virginia Coast Guard base in June 2013, he was given a "Page 7." E/21,46-47. "Page 7" is a discipline form. E/46. The CGIS investigation's conclusion was that he had abused his superior rank in his encounter with Lisa. E/47,55.

Loya was very angry about receiving the Page 7. E/47,55. He felt like he was the one who had been assaulted, and yet he was the one getting in trouble. E/48. He felt his Coast Guard career was over. E/49.

It was not just the end of his career. E/21. Loya felt that his life was over. E/21. Massive depression set in. E/49. He decided he did not want to exist anymore. E/21,44. He lost all interest in gaming. 6/54. He hired prostitutes to rub his back while he played video games, but that did not work. 6/54.

Mr. Loya blamed Lisa for his not wanting to live. E/21-22. He viewed her as a rapist and the "personification of evil." 7/271. She needed to be confronted and punished. Id. He wanted to right a "monstrous injustice" and let the Coast Guard know they got it wrong. 7/282.

At the same time as he was increasingly developing this hatred for Lisa, he came to believe the police were the enemy also. 7/274-275. He felt that police brutality was another injustice. Id. He wanted to have "mortal combat" with the police. 7/276.

Mr. Loya decided to find Lisa and kill her. E/22. He wanted her to know what she had created. E/22. He wanted Lisa to experience the same "fear that [he] had during that night at her house." E/22. Then he would stab Lisa in the heart with a knife so she would quickly die. E/22. He did not want "anything gruesome." E/22. He had no issue with Anna and did not want to harm her. E/22.

In November 2013, Loya started preparations for killing Lisa. E/50. He used a Coast Guard database to discover her new assignment, which was on the Cape. E/62; 6/54. He then performed an internet search and located her address. E/58,62.

One year later, in October 2014, he took a two-week leave. E/50, 56-57. He told the Coast Guard he was going to look for a job. E/57. Instead, the first week he went on vacation. E/57,64. During the second week, he drove from Virginia to the Cape to verify that Lisa lived at 11 Roundhouse Lane, Bourne.

E/50, 56-57, 62. He stayed at the Bourne Quality Inn.
E/61. He set up a hunter's deer trail camera on a tree
outside Lisa's house to verify that she lived there.
E/58, 62-63.

Loya returned to Virginia. E/50. He had one of
his emotional breakdowns during that trip. E/50. He
almost drove off the road. E/50. He recorded it on
his phone because he felt he did not have evidence of
his prior accusation against Lisa, so this time he
wanted documentation. E/50.

Loya's Coast Guard enlistment was set to formally
expire in March 2015. E/57. However, he was on
"terminal leave" since the first week of January 2015.
E/66. He spent the month of January relaxing, watching
mostly Star Trek, all the while knowing he was on his
last days. E/66.

His plan was to kill Lisa on February 5, 2015.
E/65. He chose this date because this was his
birthday, and he wanted to die on his birthday. E/65.

The Homicide

Loya left Virginia for the Cape on Super Bowl
Sunday, February 1, 2015. 6/55; E/56. He arrived in
the Cape on Tuesday, February 3, 2015. E/16; F/6. He
checked into the same Quality Inn in Bourne. 6/55;

E/16,61. Early Wednesday morning he set up the hunter's deer camera again outside Lisa' residence. F/7-8. Also on Wednesday he hired a prostitute. 7/311.

On Thursday, February 5, 2015 at approximately 2:12 a.m., Bourne Police responded to a call for a car fire and shots fired at 11 Roundhouse Lane, Bourne. 2/164-165. Roundhouse Lane is a large, circular condominium complex. 2/166, 170.

When police arrived, they found a car parked perpendicular to the road, right at the entrance to the complex. 2/165. It was on fire. Id. As a result, emergency vehicles could not travel past the burning vehicle and enter the complex. 2/165,167.

Next to the burning car was a fire hydrant. 2/168. Next to the hydrant was a soda can with protruding wires. Id. Thinking this was an improvised explosive device ("IED"), emergency personnel did not approach the hydrant. 2/168; 3/33. Subsequent investigation of that device revealed that it was an inert hoax device. 2/228-230;3/19-20.

Officers walked around the car, through three feet of snow, 50 feet off the side of the road, to gain access to the complex. 2/170. As they searched

the area, four shots rang out. 3/173. One hit Bourne Police Officer Jared MacDonald in the back. 3/173,179.

Other officers dragged MacDonald back to the entrance of the complex, past the burning car. 3/58, 124. He was taken by Life Flight to Rhode Island Hospital. 3/179. Officer MacDonald testified that he is disabled from the Police Department due to this injury. 3/163. The bullet struck his spine, causing nerve damage on his right side. 3/179. All of his joints on his right side beneath his hip were damaged. 3/179.

Meanwhile, other officers resumed their search of the complex. 3/59-60. They discovered several additional hoax devices. 2/230-241; 3/14-16. Some had noisemakers and lights. 3/82.

The search was ongoing when Loya suddenly surrendered. 2/172-173. He was wearing an over the head style ski mask. 2/190. He was dressed in military tactical gear. 2/173. On his person was a knife and spare magazines loaded with ammunition. 2/176-178. He had a "GoPro" camera strapped to his chest that had recorded the events of the evening. E/11.

Loya told the police at the scene that he was acting alone and that all the devices were hoaxes. 2/184-185. He also told them he did this because he was sexually assaulted. 3/78, 92. He appeared sober. 2/204. He was compliant. 3/90. He had a slow, calm demeanor. 3/90.

11 Roundhouse Lane

The police proceeded to 11 Roundhouse Lane. 3/32. As the police approached, they saw a device by the mailboxes, which later proved to be a hoax. 3/33. A "boombox" was set up nearby, but it was not playing anything at that time.³ 3/62, 68-69. The front door itself had been forced open by a shot gun blast. 3/62, 76, 130; E/8, 23.

Proceeding upstairs, a flashlight shone on the stairway. 3/37. Once the police reached the second floor, they saw that the light was attached to a shotgun laying on the floor. 3/37, 63.

The police entered the main bedroom. 3/43, 65. They discovered Lisa's body. 3/43-44, 66, 73. Anna was unconscious and shot, but still alive. 3/44. There

³ One of the complex residents testified that at the beginning of this event, he heard loud heavy metal music, which was followed by symphony music. 2/216-217.

was a plastic handcuff on her right wrist. 3/48. The police summoned the paramedics. 3/67. It took them twenty minutes to wheel their stretcher past the burning car, up Roundhouse Lane, to number 11. 3/48. Not knowing if there were additional shooters present, the paramedics were instructed to immediately remove Anna from the scene, without examining her. 3/68.

Anna Trubnikova's testimony

Anna and Lisa went to bed about 10:00 p.m. 6/86-87. Anna was awoken by the noise of someone entering their house. 6/87. A man wearing a mask and tactical gear entered their bedroom. 6/90. He was holding a rifle with a light mounted on it. 6/88, 95. He ordered them to "shut up. Separate." 6/89. He became agitated when they did not do so. Id. He threw handcuffs to them and ordered them to put them on. 6/91. They refused. Id.

Anna and Lisa had no idea of the intruder's identity. 6/90. When Lisa asked who the man was, he removed his mask. 6/91. Lisa recognized him as Loya. Id. Lisa repeatedly said she was sorry and that she was drunk on the night in question. 6/92. Loya replied, "see what you've done to me ... You're making me do this ... This is what I've become [] because of

you." 6/92. He paced the room, looking out the window. 6/93-94. He went over to the stairs and listened. 6/94-95.

Loya was angry that Lisa and Anna were not following his commands. 6/93. He approached Lisa because she would not put on the handcuffs. 6/95. She said, "this makes no sense." 6/95. Then Loya went into the hallway, disappearing from Anna's view. 6/94-95.

While he was out of the room, Anna and Lisa pulled the mattress off the bed and hid behind it. 6/95-96. Lisa started calling on her phone. 6/97. Loya reappeared in the room and shot both of them through the mattress. 6/97. Anna felt that they were going to die. 6/98. They kissed and said, "I love you" to each other. 6/98.

When Anna heard Lisa deeply exhale, she knew Lisa had passed. 6/98. Anna lay there waiting to die. 6/98. She thought she had a matter of seconds. 6/98. Somehow she was able to talk with 911 on Lisa's phone. 6/99. The 911 tape was played for the jury. 6/100-102.

Anna was taken to Falmouth Hospital. 6/105. She had a collapsed lung and shattered right arm. 6/105. She was also shot in the left thigh and upper left

arm. 6/105. She has four surgeries. 6/106. She had radial nerve damage in her right arm. 6/105.

Loya's interrogation

Loya was taken to the Bourne Police Department where he was interrogated twice. 2/191-193; 3/193-194. He told them he did not care and would tell them everything. E/48. He said he did not need or want a lawyer. E/8. The interrogations were videotaped. E/2-3. The videos were played for the jury. 4/33; 5/10. Transcripts of the videos were marked at trial for identification as "E" and "F." 4/32.

Loya told the police about his encounter with Lisa. E/19-22. He explained that he had a USB memory stick hanging from his neck that contained complete documentation. E/9. Among the material on the USB stick was a 250-page Word document (hereinafter, "tome") written by Loya in which he detailed everything about his relationship with Lisa. E/41. It covered the time from when he first met her, "to why [he] decided [he] didn't want to exist and/or, and not have her around." E/41 (*sic*). He told the police he left duplicate documentation on a hard drive in his hotel room, in case something happened to the memory stick. E/16-17, 43.

Loya told the police that he was guilty of "everything." E/9. He said he "murdered" Lisa. E/38. He went to Lisa's house with the intent to do so. E/39. He purposefully recorded the events on video with a GoPro camera strapped to his chest to provide evidence for the police. E/11. He did so because he did not expect to be alive at the end of this incident. E/43. He wanted his intentions to be memorialized because he was not going to be around to explain himself. E/43. He did not want this going down as a "senseless murder" or a terrorist attack. E/44.

Going into more specifics, Loya told the police that he initially donned his mask while still at the hotel. E/25. He explained that he purposefully blocked the road with his car and set it on fire. E/15, 41. He acknowledged planting the fake device by the fire hydrant, and other fake devices. E/34-35. He explained that he planted those devices so that responders would "back off," thus giving himself more time. E/35.

He left a .22 rifle in the snow outside Lisa's residence. E/7-8, 30. He brought another rifle, a shotgun, a pistol, and a knife to Lisa's residence. E/29-30, 68. He brought all the weapons and extra

munitions because he expected a lengthy gun fight.

E/17. He also had "rape alarms" in his pockets. E/36.

While still masked, he "breached the door" with two shots of his shotgun. E/23. A second rifle was "slung" over his shoulder. E/39. He went upstairs to the bedroom and yelled, "Get down. Get down. Face down and hands up behind your head." E/24. He intended to handcuff Lisa and Anna. E/25. He brought both regular cuffs and zip-tie cuffs. E/25. When they screamed and did not comply, he repeated his commands. E/24.

Lisa and Anna wanted to know the identity of the intruder. E/25. Accordingly, Loya took off his mask. E/25. Lisa immediately recognized him. E/25. She asked why he was there. E/26. He responded that he was there because of, "what you did to me two years ago when you raped me." E/26. Loya explained to the officers that he did not mean that he was physically raped. E/26. Rather, he meant that it was, "basically a rape of the mind from a sexual attack." E/26.

Lisa apologized repeatedly, adding that she was drunk at the time and not aware of her actions. E/26. Loya told Lisa she had two years to apologize and never did. E/26. Instead, she made him out to be the

"bad guy" in the Coast Guard investigation. E/26. He was unable to get a promotion due to that investigation. E/26.

Loya did not stab Lisa as intended. E/22-23, 27. Instead, he "got antsy" and wanted to retreat. E/23. He was "trying to fall back" because he felt he was in the bedroom too long. E/23,27. He looked out the bedroom window in the direction of his burning car. E/27. He did not see emergency vehicle lights as expected. E/27.

Just then, Lisa and Anna held up their mattress. E/27. Loya did not know what they had behind the mattress. E/28. At that point he knew he had to "complete the mission, which was [to] terminate Lisa." E/28. He discharged all fifteen rounds from his pistol in the direction of Lisa behind the mattress. E/28-29. He heard gurgling noises, which he took to be bleeding. E/28. He was not trying to hurt Anna. E/29.

When he was done, he placed a new magazine in the pistol and holstered it. E/29. He brought a total of two spare magazines for the pistol, which were in his military-style belt. E/29. He retreated outside to where he left the .22 rifle in the snow. E/30,40.

Once there, he drank some water and hid behind a snowbank, waiting for the police to arrive. E/30.

Loya waited "quite a while" but the police did not come. E/40. He moved to a new position behind a house. E/40. Still the police did not come. E/30-31, 38.

Loya decided to go look for the police and initiate a firefight. E/30-31, 38. He wanted the police to shoot him. E/30. He was expecting to die from being shot by the police. E/30-31. The first officer that Loya happened to encounter was Officer MacDonald. E/13, 40. He never saw MacDonald's badge or uniform, but he knew it was someone trained in firearms because of MacDonald's firing stance. E/12-13, 32-33. It did not appear to be a civilian's stance. E/32. He acknowledged shooting three or four shots at MacDonald. E/11, 32, 38-39. He did so with the intent of murdering MacDonald. E/39.

After shooting MacDonald, Loya retreated behind a house. E/72. Again he waited for the police, but they never sought him out. E/40, 70-71. He had planned to die on this date for so long, but the police were not coming after him as expected. E/73. The wait caused him to decide to surrender. E/73. He disarmed himself

of the rifle and handgun, put his hands up, and stood under a lamp post so the police could see him. E/40, 73-74. The police did arrest him, as described earlier. E/30. During the interrogation, Loya congratulated the police for showing discipline by arresting him rather than shooting him. E/30.

The police asked Loya how he felt about having succeed in his goal of killing Lisa. E/74. He responded "the job's done" and that it was something he needed to do before he died. E/74-75. The police pointed out that he had only succeeded in half his plan, that is, he was still alive. E/75. Loya responded that he had thought about that. Id. He asked himself as he was surrendering, "why are we doing this now?" E/75. By "we," he meant himself. Id.

Defendant's Statement at the Barnstable Jail

On February 9, 2015, Loya was being held at the Barnstable County Jail. 6/50-51. There he spoke to Correctional Officer Eli Horrigan. Id. Horrigan told Loya he would report anything he said. 6/51. But Loya said he did not care, because he had already told the police everything. 6/51. He told Horrigan essentially the same things as he had already said to the police. 6/51-62.

Autopsy

Medical Examiner Dr. William Zane testified Lisa was shot eleven times. 5/105, 110. The cause of death was perforation of the lungs and aorta by two bullets. 5/138. She died in seconds. 5/139.

Subsequent Investigation

The police found a rifle and the handgun on the back deck of nearby 71 Roundhouse Lane. 3/84, 106; 5/157-159. A tactical belt, ammunition, and ear protection were also present. 5/157-159.

The police obtained a search warrant for Loya's hotel room. 6/144. Inside they found the backup USB that Loya had mentioned during the interrogation. E/146. They also found a cardboard stand up cut out of James Bond. Id.

Front desk attendant Tristan Umeda testified he checked in Loya on February 5, 2015. 5/97,99. Loya had purchased his room online, for multiple days. 5/100. When he physically presented at the front desk, he asked Umeda for the military rate. 5/99. Umeda told him he could not give him that rate because the room had been purchased online. 5/99. Coincidentally, Umeda also checked in Loya during his October 2014 stay.

5/101. There was nothing unusual about either check-ins. 5/99, 102.

Chesapeake police obtained a search warrant for Loya's Virginia residence at 839 Shoal Creek Trail, Chesapeake. 5/17-18. When they searched the property, the floors were coated with gun oil, making them very slippery. 5/21-22. Likewise, the stairs and handrail to the second floor were coated in gun oil. Id. There were life-size Star Wars figures holding weaponry stationed in several places, as well as a Batman figure. 5/24. When the police pulled on the drop-down attic stairs, a "ginormous" spider bounced down on a bungee cord. 5/25-26. When the police entered the master bedroom, a bomb-like "tick tock" noise activated. 5/24. Expensive Star Wars/Star Trek collector figurines were in the living room. 5/41-42.

Expert Testimony on Criminal Responsibility

Dr. Martin Kelly, Psychiatrist

Psychiatrist Dr. Martin Kelly was originally retained by the Commonwealth to opine on Mr. Loya's criminal responsibility. 7/203,206. He reviewed the police reports, extensive Coast Guard reports, Bridgewater State Hospital records, Dr. Daignault's report (an individual to be discussed shortly),

videotapes made by Mr. Loya, Mr. Loya's writings, videos of Mr. Loya's interrogation, and Correctional Officer Horrigan's report. 7/207-208. He met with Mr. Loya three times, each meeting lasting two to two and a half hours long. 8/209.

Dr. Kelly opined that Mr. Loya did not have criminal responsibility because he had a disease which caused him to lack the substantial capacity to conform his conduct to the requirements of the law. 7/209. The disease in question was high functioning Asperger's Disease, which is part of the Autism Spectrum. 7/209,212. People with this disease are not outgoing and engaging. 7/210. They can be with people and socialize to a degree, but they do not pick up on ordinary social cues like most people. Id. They do not develop emotional bonds to other people, such as Mr. Loya's lack of bonds with his parents and siblings. 7/212.

Dr. Kelly noted that Mr. Loya had used the internet to diagnose himself as having a Schizoid Personality Disorder. 7/216. However, Dr. Kelly did not think Mr. Loya fit that diagnosis because people so classified have a "pervasive wish not to be with

people." 7/216. They are isolated all the time, like a hermit living in the woods. 7/217.

Dr. Kelly did not think Mr. Loya had a Delusional Disorder or major depressive disorder. 7/118-121.

Dr. David Holtzen, Psychologist

Dr. David Holtzen is a forensic psychologist who worked at Bridgewater State Hospital. 7/330. He performed competency and criminal responsibility examinations on Mr. Loya at Bridgewater. 7/331, 333. He reviewed the Bridgewater medical record, Mr. Loya's "criminal record," and two documents provided by Detective John Noble: "one was a narrative of the alleged offenses, and another had to do with reading Mr. Loya's rights when he was arrested." 7/332. He meet with Mr. Loya on two occasions. 7/332. The first occasion was for 130 minutes and largely concerned competency. 8/378. The second was about 85 minutes. Id. Dr. Holtzen was unaware that there was a Coast Guard investigation. 8/383.

Dr. Holtzen acknowledged that he did not seek out police records from the district attorney other than the two mentioned above. 8/383. When asked if he was aware of Mr. Loya's 250-page tome, Dr. Holtzen replied he was aware Mr. Loya had made a "suicide note," but

he was unaware of its length. Id. He did not seek to obtain it. 8/383-384. He had not heard of the Coast Guard Page 7 report, Mr. Loya's 22-page letter to Lisa, or the other evidence mentioned herein. 8/384-387. According to Dr. Holtzen, Mr. Loya mentioned he had been raped/sexually assaulted, but he [Mr. Loya] did not elaborate, and Dr. Holtzen did not probe into the matter. 8/388-389. Dr. Holtzen did not look at the reports of Dr. Kelly, Dr. Edershein, or Dr. Daignault. 8/405-406. In fact, he did not even know they were involved in this matter. 8/405-406.

Dr. Holtzen opined that Mr. Loya had criminal responsibility. 7/333. However, he diagnosed Mr. Loya as having Major Depressive Disorder, which he defined as someone being depressed every day for a period of time. 7/349.

Dr. Judith Edershein, Psychiatrist

Dr. Judith Edershein was retained by the Commonwealth to opine on criminal responsibility. 8/415, 422. She spent ninety hours on this matter, reviewing video and records. 8/423, 427. However, she did not interview Mr. Loya. 8/427.

Dr. Edershein diagnosed Mr. Loya as having two personality disorders, neither of which is relevant to

criminal responsibility. 8/429,441. These two diagnoses gave Mr. Loya a severe maladaptive personality. 8/429. The first is Avoidant Personality Disorder, which is defined as being insecure in social situations, having poor self-esteem, and being hypersensitivity to rejection. 8/432. The second was Borderline Personality Disorder. 8/434. This is characterized as having unstable relationships, unstable emotions, unstable affect, and a poor sense of self. Id.

Dr. John Daignault, Psychologist

Dr. Daignault was retained by the defense. 8/505. He saw Mr. Loya seventeen times, for a total of 43 hours of interview time. 8/512. He reviewed all the records and media mentioned herein. 8/512. In addition, he interviewed Mr. Loya's father and Mr. Heller. Id.

Dr. Daignault opined that Mr. Loya did not have criminal responsibility. 8/514-515. He diagnosed Mr. Loya as having Persecutory Delusional Disorder, a major mental illness, that was exacerbated by Major Depressive Disorder. 8/515, 519. In addition, he had Schizoid Personality Disorder. 8/515. It is not

uncommon for one with a delusional disorder to also have a personality disorder. 8/515.

As to the Persecutory Delusional Disorder, that is characterized as someone having a delusion, which in this case was Mr. Loya believing that Lisa had superhuman influence over him, and that she was the reason for him living. 8/516, 517. In addition, he was diagnosed as having a Persecutory subtype because he believed he was a victim. 8/519.

As to the Major Depressive Disorder, that was brought on by the chasm between Loya and Lisa once he reported the incident. 8/525. As a result of that report, "he had now cut off the very person that he held on to, for whatever reason, for whatever psychotic reason he had held onto her as the reason he was alive. He had now cut her off." 8/525.

The Schizoid Personality Disorder is a clinical way of saying "the proverbial loner." 8/520-521. This person has few social relationships, and who is more comfortable spending a great deal of time on solitary activities. 8/521. They have very little, if any, romantic life. Id.

Dr. Daignault opined that as a result of Mr. Loya's mental health, he lacked the substantial

capacity to appreciate the wrongfulness of his actions, and his ability to conform his conduct to the requirements of the law. 8/515.

Each of the four experts drafted lengthy reports, which were submitted into evidence by agreement. 7/224; 8/374; 8/472, 8/563. Those reports are contained in the Impounded Appendix.

Mr. Loya mouths "GUILTY" to the jury

After the jury charge, the judge conducted a bench conference to see if there was any objection by the attorneys. 9/715. While the attorneys were up at the bench, the defendant mouthed the word "GUILTY" to the jury. 9/756. It was recorded by the television crew in the courtroom. Id. The judge made appropriate inquiry of the jury as to whether they saw this and/or what effect this had on them. 9/760-783.

The jury deliberated for three days. 9/755. The first day the jury wanted to deliberate until 5:00 p.m. 9/755. The deliberation on the second day lasted all day. 10/796-797. The verdict was returned on the third day at 2:36 p.m. 11/805.

ARGUMENT

I. A new trial is required where the jury verdict slip should have asked whether the Commonwealth has proven the defendant's guilt and sanity beyond a reasonable doubt, which require "Yes" or "No" answers, instead of asking the jury to categorize the defendant as being "guilty," "not guilty, lack of criminal responsibility," or "not guilty."

Counsel brought a motion at the commencement of the trial, entitled "Defendant's Motion re: Jury Slips." 1/169; A-173. In this motion, the defendant requested the jury verdict slips be phrased in terms of whether the Commonwealth had met its burden of proving the crimes beyond a reasonable doubt, rather than forcing the jury to decide whether the defendant is "guilty" or "not guilty." A-173-174. It was reversible error to not adopt the language proposed by the defendant.

The defendant's Motion stated as follows:

The defendant submits that the words 'not guilty' are, in effect, tantamount to 'innocent' and is a verdict that in essence requires the jury to 'find' that the defendant is 'innocent'. That every day vernacular of both terms are clearly the same. If you are 'innocent' you did not do 'it', if you are 'not guilty' you did not do 'it'.

...

The defendant requests that the Court instead refrain from such language as 'if the jury find the defendant 'not guilty.'" Instead, the Defendant would request that the Court state, 'if the jury cannot unanimously agree that the charges (or issue

of criminal responsibility) were proven beyond every reasonable doubt.'

This language avoids a number of legal problems that subtly shift the burden of proof and constitute a due process violation in that the jury does not have to 'find' anything. ...

A-173-174.

Trial counsel proposed a verdict slip in which the questions to be answered by the jury would be phrased as, "Has the government proven beyond every reasonable doubt that..." A-174-175. To each question the jury would be permitted to answer either "Yes" and "No." Id.

As to criminal responsibility, the defendant proposed the following questions (see A-174-175):

2. Has the government proven beyond every reasonable doubt that the defendant, at the time of such killing, was not suffering from a mental disease or defect?

_____ Yes _____ No

If the answer to this question is no, proceed to Question 3. If the answer is yes, proceed to question 4.

3. Has the government proven beyond a reasonable doubt that such mental disease or defect did not affect the defendant so that he was unable to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of the law?

_____ Yes _____ No

If the answer to this question is yes, proceed to sign the verdict slip. If no, proceed to question 4.

4. Has the government proven beyond every reasonable doubt that at the time of the killing that the defendant was not suffering from a mental disease or defect that reduced his capacity to either appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law?

_____ Yes _____ No

Counsel's argument was correct. The issue in a criminal case is whether the Commonwealth has carried its burden of proving the elements of the crime beyond a reasonable doubt. To that, the answer is either "Yes" or "No."

Current verdict slip practice does not phrase the issue in terms of whether the Commonwealth has proven its case beyond a reasonable doubt. Instead, the jury is instructed that if the Commonwealth has not met its burden, it must check off "not guilty" (or, in this case, "not guilty, lack of criminal responsibility") on a verdict slip. See e.g., 9/716, 718 (instruction in this case); A-184-213 (verdict slips in this case).

However, as argued by trial counsel, the option of "not guilty" is, in "effect, tantamount to 'innocent' and is a verdict that in essence requires the jury to 'find' that the defendant is 'innocent'". A-173. Thus, equating the Commonwealth's failure to prove its case to the defendant being "not guilty" is

a false equivalency because, "insufficient evidence of guilt does not necessarily equate with actual innocence." Renaud v. Commonwealth, 471 Mass. 315, 319 (2015) (In a claim under the Erroneous Convictions statute, a defendant whose conviction is reversed on insufficient evidence grounds is not necessarily innocent).

In the instant case, the judge stated at the beginning of the trial that he would "study" the defendant's request "with interest." 1/169. However, in the jury charge conference at the end of the case, there was no further discussion about it. 9/632-647, 664-665, 695-696. Defense counsel did not object to the verdict slip. 9/696-967. As such, the standard of review is a substantial likelihood of a miscarriage of justice (SLMJ). Commonwealth v. Niemic, 472 Mass. 665, 673 (2015).

There was a SLMJ in this case. In opening argument, defense counsel stated there was no dispute the defendant committed the homicide in this case. 2/154. The sole issue was going to be the defendant's criminal responsibility. 2/155-159.

This was not a clear-cut case of criminal responsibility. Four clinicians testified on that

issue: two favorable to Mr. Loya (Dr. Kelly, 7/203; Dr. Daignault, 8/505), and two favorable to the Commonwealth (Dr. Holtzen, 7/330; Dr. Edershein, 8/415). Most significantly, the Commonwealth's own expert opined that the Mr. Loya did not have criminal responsibility! 7/209. Furthermore, the jury deliberated over three days. 9/755, 10/796-797, 11/805. Under these circumstances, it is reasonable to conclude that the jury was pondering the only real issue in the case, Mr. Loya's criminal responsibility.

The instant jury could well have believed Mr. Loya had some degree of criminal responsibility, but deliberated over three days on whether the Commonwealth had proven it beyond a reasonable doubt. The option available to the jury, "Not Guilty, Lack of Criminal Responsibility," was tantamount to finding him "innocent." A-184-213. If, instead, it was phrased as "Has the Commonwealth satisfied its burden of proving criminal responsibility beyond a reasonable doubt?," the jury would be thinking of the issue in terms of whether the Commonwealth had satisfied its burden, not in terms of whether Mr. Loya is "not guilty." Whereas there was such conflicting evidence in this case on the issue of criminal responsibility,

there was a substantial likelihood of a miscarriage of justice in failing to give the defendant's requested instruction. Commonwealth v. Niemic, 472 Mass. 665, 673 (2015).

II. A new trial is required where the jury should have considered whether the defendant is "guilty, but not criminally responsible," rather than "not guilty, lack of criminal responsibility"

At the start of the trial, the Court considered the defendant's "Motion to Permit the Jury To Consider Whether the Defendant is Guilty But Insane." 1/167; A-169. The judge denied the defendant's request. 1/168. This was error.

In the Memorandum in support of the motion, defense counsel astutely argued,

[I]n order to accept the defense of not guilty by reason of insanity, the jurors must check off a box on the verdict slip that says 'not guilty.' In an overwhelming emotion case such as this, [where the defendant committed] such serious violent acts, jurors would likely have [a] difficult time getting past such language. See Commonwealth v. Seguin, 421 Mass. 243, 246 n.3 (1995). The defendant suggests that allowing the jurors to find the Defendant 'factually guilty but not criminally responsible' will permit them to reach a verdict that reflects the state of the evidence before them and would reduce the possibility of jury nullification of the insanity defense.
A-170-171.

Defense counsel acknowledged to the judge that there was no Massachusetts authority in support of

this argument. 1/167. However, his Memorandum cited to several jurisdictions that utilize this "guilty but insane" phraseology. A-171-172. While most of those jurisdictions legislatively adopted this phraseology, one of them apparently did it judicially.

In Williams v. State, 710 So.2d 1276, 1325 (Ala. Crim. App. 1996), the Alabama court refers to its system as using the nomenclature "guilty but insane." According to the Court, that verdict, "has the same effect as a verdict of not guilty by reason of insanity or mental disease or defect. See § 13A-3-1; § 15-16-1." Id. at 1326. However, the statutes cited by the court refer to the "insanity" defense. Add-48. They do not mention the expression, "guilty but insane." Id.

In Massachusetts, the law of "insanity" or "criminal responsibility" is entirely common-law based. See Commonwealth v. McHoul, 352 Mass. 544 (1967). The Legislature has not spoken on the issue. Accordingly, the Court is free to develop the common law by adopting the phrase "guilty but not criminally responsible."

As mentioned above, trial counsel brought this issue to the judge's attention at the beginning of the

trial. 1/167-168. The request was that the court "allow the jury to consider the case" using the nomenclature mentioned herein. A-170. Counsel did not specify whether he was looking for jury instructions to that effect, or whether he wanted the verdict slip to have said wording, or both. Id. In any event, counsel did not raise the issue again at the jury charge conference.⁴ 9/630-648. As such, the issue is before the court on the substantial likelihood of a miscarriage of justice (SLMJ) standard. Commonwealth v. Niemic, 472 Mass. 665, 673 (2015).

There was a SLMJ in this case. As argued by trial counsel, given the egregious facts of this case, it would be extremely hard for a jury to associate the words "not guilty" with this defendant. A-170-171. The jury should have been given the opportunity to find the defendant, "guilty but not criminally responsible." The jury charge and verdict slip should have been so worded. There was a substantial

⁴ In the jury charge conference, the judge stated the defendant's proposed jury instructions, "revolve around the idea of guilty, but insane, or some variation of that." 9/632. He then proceeded to preserve the defendant's rights on the issue. Id.

However, the defendant's requested jury instructions do not mention "guilty, but insane," or some variation thereof. A-179-183.

likelihood of a miscarriage of justice in not doing
so. Commonwealth v. Niemic, 472 Mass. 665, 673 (2015).

**III. Loya should be granted a new trial pursuant to
G.L. c. 279 § 33E**

Mr. Loya respectfully requests a new trial or a
reduced verdict pursuant to G.L. c. 278 § 33E.

Commonwealth v. Gould, 380 Mass. 672, 680 (1979).

CONCLUSION

For all of the reasons stated herein, Mr. Loya
requests that his convictions be reversed.

Defendant Adrian Loya
By his attorneys

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March 2019

APPELLANT'S M.R.A.P. RULE 16(k) CERTIFICATION

I, Theodore Riordan, Esq. hereby certify that the
appellant's brief and appendix complies with the rules
of court including, but not limited to: Mass.R.A.P.
16(a)(13), 16(e), 18, 20, and 21.

Rule 20 was complied with by using the monospaced
font Courier New, 12 point, using Microsoft Word 2010
software.

Dated: March 6, 2019 /s/ Theodore Riordan
Theodore Riordan, Esq.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Supreme Judicial Court
Docket No. SJC-12475

Commonwealth)
)
v.)
)
Adrian Loya)

M.R.A.P. 13(e) Certificate of Service

I, Theodore Riordan, Esq., hereby certify that I efiled the defendant/appellant's principal brief and appendices with the Supreme Judicial Court on the date specified below, and that I simultaneously e-served the following counsel with those documents.

In addition, once the Court advises how many paper copies of these documents that it wants filed, I will have that number of copies prepared, as well as two copies for counsel as required by M.R.A.P. 19(d) (1) (B) (i), and I will mail said paper copies to the Court and counsel as soon as they are produced.

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ADDENDUM
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Alabama Criminal Code § 13A-3-1..... Add-48

Alabama Criminal Code § 15-16-1..... Add-48

Alabama Criminal Code § 13A-3-1

(a) It is an affirmative defense to a prosecution for any crime that, at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) “Severe mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

Alabama Criminal Code § 15-16-1. Defense of insanity to be by special plea

When the defense of insanity is set up in any criminal prosecution, it must be by special plea, interposed at the time of arraignment and entered of record upon the docket of the court, which, in substance, shall be “not guilty by reason of insanity.” A plea of insanity shall not preclude the usual plea of the general issue, which shall not, however, put in issue the question of the irresponsibility of the accused by reason of his alleged insanity, this question being triable only under the special plea.